Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

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CASE AND COMMENT

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Changes in the Supreme Court.

The death of Horace Gray, associate justice of the Supreme Court, has just been announced. He had previously resigned. Mr. Justice Gray has been for many years a very conspicuous figure in our highest tribunal. Of great size, and towering above the other members of the court when standing, his massive appearance was most impressive. His opinions have long been recognized as admirable examples of scholarly research and literary excellence. They were usually long, and often amounted to an exhaustive history of the doctrine under discussion. His successor on the bench of the United States Supreme Court was also his successor as chief justice of the supreme judicial court of Massachusetts.

Mr. Justice Holmes's appointment has received great praise throughout the country. It is doubtful if any other appointment could have given greater satisfaction. As the judicial career of Mr. Justice Gray was preceded by his service as reporter of the decisions, that of Mr. Justice Holmes was preceded by distinguished services as a legal author and law-school lecturer. His work on the common law, published while he was yet a young man, immediately gave him high standing, both in the United States, and in England. His learning in this field is vast and accurate. He was made chief justice of the Massachusetts supreme judicial court on August 2, 1899. The extent to which he cites English cases as precedents is a noticeable feature of his opinions. The style of the opinions of Mr. Justice Holmes is in great contrast to that of the opinions of Mr. Justice Gray. Instead of the long, full, and easy-flowing opinions of the latter, those of Mr. Justice Holmes are notable for their brevity and condensation. Unless his habit in this particular changes, his opinions will average much briefer than is common with the opinions of that court in later years. It may be said, however, that the brevity of opinions in Massachusetts is greatly facilitated by the condensed statement of the case by which, under the practice in that state, the questions to be determined are succinctly presented. Partly as a result of this, the opinions of Massachusetts judges are usually much shorter than those found in the Reports of most other states.

Those who know but little about judges and courts have been familiar with the account of the search by Oliver Wendell Holmes for his "captain" on a southern battlefield. The search was successful, and the captain found alive, else the new appointment by President Roosevelt to the bench of the Supreme Court could never have been made.

The training and temper of Mr. Justice Holmes have been distinctively scholarly, but the ideals and theories of scholarship

have not dominated his thinking. In the questions that modern conditions have forced upon the courts, he has shown his ability and courage to grapple with them without slavish reliance upon precedents made under other conditions. With training and environment that might tend to conservatism, he is a bold and progressive thinker. Though he has already reached the age of sixty-one, Massachusetts lawyers know that he has a capacity for work that few younger men possess.

Several other justices of the Supreme Court have reached the age at which they are entitled to retire from work, and it is rumored that Mr. Justice Shiras expects to terminate his services in that court very soon. Any changes in the personnel of the court are of such importance to the nation, that the public will await with great interest the announcement of any new appointments to this bench.

A Sentence to Fit the Crime.

The thanks of the public are due to Judge Kellogg, of Yonkers, N. Y., for imposing a six months' sentence of imprisonment upon a man convicted of reckless conduct resulting in collision with a street car, if the proof justified the conviction. A New York daily assails the judge for imposing such a punishment without the usual alternative of a fine. The only question in the case, which it is fair to assume was correctly decided upon the trial, is one of fact. The justice of the sentence, if the facts are proved, is beyond dispute. The plea for an option to pay a fine in lieu of imprisonment is really a whine for immunity from punishment. Many of those who endanger the lives of others by reckless use of automobiles would care nothing for a fine. If legal penalties have any purpose whatever, it is to prevent crime, and a penalty that the offender can treat with contempt is only a farce. Whatever sympathy we may feel for wrongdoers who have been merely reckless, and not malevolent, it remains true that punishment must be made to hurt if it is to be efficacious. Judge Kellogg's decision is a recognition of this truth, and, if justified by the facts, it is just and righteous altogether.

Popular Election of Judges.

The belief that the people can be trusted to elect judges as well as other officers, though it has been dominant in the organization of most of the state governments in this country, has never been universally accepted. Persons who have a tendency to see defects more readily than excellencies, and those who are least inclined to trust in the common people, are very prone to regard the popular election of judges as a sad mistake. But this all depends on the fitness of the people for self-government. It may be, indeed, that the voters of a state might be intelligent enough to make a fair success in the election of administrative officers, and yet not intelligent enough to choose good judges; but when the people reach a grade of intelligence high enough, no system of choosing judges can be so good as that of their election by popular vote. Some significant facts were presented on this subject in the recent election in the state of New York. In several instances candidates of the dominant party for judicial positions were defeated. It is not the province of this journal, and it certainly is not the intent or wish, to pass judgment on the merits of the respective candidates, or to intimate that the judges defeated were not the equals or superiors of those who were elected. The matter is referred to only as a strong indication of a purpose on the part of the voters to choose their judges without much regard to politics. In that light and to that extent their action is encouraging to those who believe in the policy of an elective judiciary. There is abundant reason for trusting the people of this country to choose their own judges. The result is not always ideal, but it is certainly not often bad. It is safe to say that there has been no such dissatisfaction with the results of judicial elections in recent years as there has been in England over what the leading journals of that country have denounced as judicial scandals in the appointment to the bench of purely political barristers and the relatives of cabinet ministers or political partisans, without regard to their legal experience or judicial qualifications.

University Law Reviews.

The leading law schools of the country

have in recent years shown a tendency to enter upon the publication of law reviews or journals which not only represent the interest of the institutions out of which they come, but also undertake the more ambitious purpose of a general law review. The Harvard Law Review and the Yale Law Journal have for some years occupied a high level of excellence in this field. More recently other great law schools have realized the importance of entering the same field. The Columbia Law Review and the Michigan Law Review are published by the law departments of Columbia and Michigan Universities, while the University of Pennsylvania has acquired the ownership and control of the well-known American Law Register, which is now published by the department of law of that institution. All of these are of high excellence, and there are creditable publications of other law schools that might be mentioned. The lamentable indifference of the great majority of lawyers to publications of this kind makes it difficult to conduct a high-grade law review and get returns adequate to its value and cost. A great law school, however, has in its own graduates, as the years go by, a valuable clientage for such a publication, and the growth of these university law reviews will tend to keep an increasing number of lawyers from narrowing all their thoughts about law to the cases that happen to come into their own offices.

The Right to Riot.

The expulsion of a member by the Schenectady trades assembly because he went with a company of the national guard to which he belonged, when it was called out to preserve order during a strike, was an act of incredible stupidity. At a time when an issue as to the lawful character of one of the great labor unions was being forced on the country, the deliberate and insolent assertion by a labor organization of the right to indulge in violence without interference by the lawful authorities exhibits a degree of imbecility to which labor unions have rarely descended. The claim of a privilege to use lawless violence to enforce the tyrannical will of the union upon men who do not choose to join it needs only to be clearly made in order to alienate from such unions all the sympathy of the general public. But the tolerance of violence during strikes by pusillanimous officials has done much to breed among the more ignorant laborers the idea that they have a right to riot in aid of a strike. A sudden and sharp awakening from this delusion is necessary. The open declaration by a labor organization that they regard the forces of the law to preserve order as their enemies is a startling indication of the extent to which this pernicious idea has been propagated, but it will do much to show the public the logical results of the cowardly policy of tolerating disorder and violence. The laborer who regards the national guard as his enemy is himself an enemy of the government. The labor union that declares for the right to riot in aid of a strike will quickly find that the forces of law and order in this country only need to be roused to be overwhelming.

Sending Money by Mail.

The persistence with which great numbers of people send small sums of money by mail, notwithstanding the obvious risks of loss, is a sufficient indication of the need of some form of easy and safe remittance of small amounts. It is greatly to the discredit of the government that after so many years of experience with postoffice money orders, the system in use is still unsatisfactory. There was something like genius in the novel but exceedingly simple proposition made two or three years ago, to issue small bills with a blank in which the name and address of a payee could be written and thus instantly transform an ordinary bill for $1 or $2 into a check or a draft on the government for that amount, payable only to the payee named, but on which he could get his money at any bank where he could be identified, as readily as if it were a New York draft for the same amount. Notwithstanding the simplicity of the plan, Congress has failed to adopt it. Any enterprising business house to which an improved method of so great value should be suggested would unhesitatingly and enthusiastically adopt it. The only valid objections to the plan are that it might make some additional work in the treasury department. If that is a sufficient reason why millions of people should be denied the advantages and conveniences

which this simple method offers, the proposition should be abandoned. If not, Congress should make short work of the matter. If congressmen take an intelligent interest in the question long enough to understand what the measure is, we shall soon have the most important and widely appreciated improvement to our postal system that has been made in many decades.

Taxing Corporate Franchises.

The interest of the people of the state of New York was aroused to an unusual degree by the adoption of the recent law for the taxation of the special franchises of such corporations as street railways and other companies having special privileges in streets or other public property. That law, while vigorously contested by many corporations affected by it, has been sustained thus far, though its construction is by no means yet settled in all respects. But most of the taxation of corporate franchises has been of another kind, attracting less public attention, it may be, but not less important.

The variety of ways in which the different states have proceeded to impose taxes that essentially rest upon the franchises of corporations is somewhat remarkable. In Massachusetts, for instance, statutes imposing taxes on the capital stock of corporations are held, owing to the peculiar wording of the state Constitution, to impose excises or duties on the franchise as a commodity. When, however, such taxes rest upon foreign corporations, *pro rata* as to their capital stock within the state, the impost is an excise on account of property employed in the commonwealth. In Pennsylvania, on the other hand, a long line of statutes, beginning as far back as 1840, providing for taxes upon the capital stock of corporations, have been held to tax the property and assets of the companies, including their franchises. The capital stock which is the subject of the Pennsylvania taxation is not so much the aggregation of the value of the property and assets, tangible and intangible, as it is a capitalization of the results flowing from the use thereof, when there are no circumstances making it necessary to ascertain the actual value of the property and assets,—as, for instance, when the capital stock stands invested in exempt manufacturing plants, patent rights, or government bonds, or when a foreign corporation is the subject of the tax, —its franchise and much of its property being of necessity outside of the state, and having no situs for taxation in it. Similar corporate taxation in Illinois is not markedly different. Quite distinct from these, the statutes in New York have in terms imposed taxes on the franchises or business of corporations, and have been construed by the courts to require the taxation of domestic corporations on their franchises and of foreign corporations on their business within the state. Entirely distinct from all these methods of taxing franchises, are the statutes of Ohio and Indiana, which purport only to impose taxes on the property of the corporations within their respective jurisdictions, but under which interstate corporations are assessed, not merely upon the tangible property within the state, but upon a *pro rata* part of the entire value of the interstate plant, necessarily drawing to the taxed property and enhancing its value by the value of the corporate franchise, though the corporation be a foreign one. In Kentucky much the same result is reached, but the statute expressly provides for a taxation of the franchises of the corporations, in spite of which the taxes thus imposed are held to be property taxes.

The vast amount of corporate property, and the extraordinary value of the franchises of many corporations, make this question one of no ordinary importance. In the Kentucky case of Louisville Tobacco Warehouse Co. v. Com. 57 L. R. A. 33, the tax imposed on railway and other corporations having "any special or exclusive privilege or franchise not allowed by law to natural persons or performing any public service" is held not to reach a corporation engaged in the business of a tobacco warehouseman, on the ground that ordinary business corporations created under the general law do not have special or exclusive privileges within the meaning of the statute. The annotation to the case exhaustively reviews the decisions on the taxation of corporate franchises in the United States. A review of all these decisions shows that the subject of taxing corporate franchises is still in the evolutionary stage, while the courts, on the other hand, have established many guiding principles

such unions all the sympathy of the general | be denied the advantages and conveniences

that must be helpful in solving the new problems that are sure to arise on this subject.

Index to New Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 57, Parts 1 and 2.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

The part containing any note indexed will be sent with CASE AND COMMENT for one year for $1.

Among the New Decisions.

Actions.

A judgment for plaintiff in an action for injury to his vehicle through negligent obstruction of a highway is held, in Reilly *v.* Sicilian Asphalt Pav. Co. (N. Y.) 57 L. R. A. 176, to be no bar to another action for injury to his person, arising out of the same accident.

Bailment.

For the deterioration of goods while in cold storage the warehouseman is held, in Marks *v.* New Orleans Cold Storage Co. (La.) 57 L. R. A. 271, to be responsible notwithstanding a stipulation, in the receipt issued for the goods, to the effect that he will not be responsible for "damage" to the goods.

The value of wheat stored in a public warehouse at the owner's risk of fire is held, in Moses *v.* Teetors (Kan.) 57 L. R. A. 267, not to be recoverable by the owner from the warehouseman in case of a subsequent fire, where the identical wheat stored was sold according to the custom of the warehouseman, known to the owner, to commingle grain so deposited for storage with like quality belonging to him, and from such mass to sell from time to time and replenish with such other grain as should be brought to him for storage or he should buy, and when the warehouse burned it contained enough wheat of the quality stored to replace the same, and the warehouseman had at all times kept on hand sufficient in quantity and quality to replace all wheat stored with him.

Banks.

A bank falsely certifying that an insurance company has its authorized capital on deposit, for the purpose of inducing the insurance commissioner to grant it a license, is held, in Hindman *v.* First Nat. Bank (C. C. A. 6th C.) 57 L. R. A. 108, to be liable to persons who are damaged by the purchase of the stock in reliance thereon.

Bicycles.

An ordinance requiring bicycle riders to carry lamps is held, in Des Moines *v.* Keller (Iowa) 57 L. R. A. 243, not to be unconstitutional as infringing the equal privileges and immunities of bicycle riders because not applying to other silently running vehicles.

Bills and Notes.

A note given to reimburse a surety on a fidelity bond for what it has been compelled to pay because of the principal's embezzlement, on condition that the surety would not prosecute the principal for the defalcation, is held, in United States Fidelity & G. Co. *v.* Charles (Ala.) 57 L. R. A. 212, to be void.

Bonds.

A county treasurer and sureties on his bond are held, in Thomssen *v.* Hall County (Neb.) 57 L. R. A. 303, to be liable for the loss of money by the failure of a bank in which it was deposited for safe keeping, in good faith, in the belief that the bank was solvent.

Carriers.

A carrier is held, in United Railways &

Electric Co. v. Hardesty (Md.) 57 L. R. A. 275, not to be obliged to honor a coupon from a commutation book of tickets intended for passage between designated points, and which provide that they are not "good unless detached by the conductor," when the coupon has been detached by the commuter and the book left with a member of his family, so that it is not present when he tenders the coupon in payment of fare.

A carrier is held, in Homans v. Boston Elev. R. Co. (Mass.) 57 L. R. A. 291, to be liable for nervous shock to a passenger, resulting from a jar to the nervous system, which accompanies a blow to the person, caused by being thrown from the seat through the carrier's negligence; and it is held not to be necessary to show that the shock is the consequence of the blow.

Conflict of Laws.

The validity of a marriage is held, in Hills v. State (Neb.) 57 L. R. A. 155, to be determined by the law of the place where the marriage is solemnized; and a marriage legal where solemnized is held to be valid everywhere.

Constitutional Law.

Prohibiting the sale of dairy products containing any preservative other than salt, sugar, or spirituous liquors in specified cases, or the sale of preservatives for such use, is held, in People v. Biesecker (N. Y.) 57 L. R. A. 178, to be beyond the power of the legislature when the use of preservatives is not declared to be an adulteration, and the statute is not aimed at adulteration generally.

Statutes forbidding the manufacture or sale of any article in imitation of butter or of oleomargarine, which contains any coloring matter, or the sale of any substance not butter, but having the appearance of butter, unless sold under its true name and plainly marked, and requiring that all persons dealing in food shall, upon proper application and tender of price, furnish a sample for analysis, are held, in State *ex rel.* Monnett v. Capital City Dairy Co. (Ohio) 57 L. R. A. 181, to be a proper exercise of the police power.

An act creating a board of police commissioners which shall have exclusive control of the police officers of the city, naming the first members of the board, prescribing the manner in which their successors shall be chosen, and setting forth their powers and duties, is held, in Americus v. Perry (Ga.) 57 L. R. A. 230, not to be an unconstitutional deprivation of local self-government.

The establishment and control of a water supply system is held, in State *ex rel.* White v. Barker (Iowa) 57 L. R. A. 244, to be a matter that pertains to the municipality, and the legislature is held to have no power to take the management of the system away from the appointees of the municipality, and vest it in persons for whose selection it provides.

A statute requiring payment of damages for injuries to a business through the taking of property for public use is held, in Earle v. Com. (Mass.) 57 L. R. A. 292, not to be unconstitutional on the ground that taxes cannot be levied for such purpose.

A statute providing for the Torrens system of registering land titles is held, in State *ex rel.* Douglas v. Westfall (Minn.) 57 L. R. A. 297, not to be unconstitutional.

The exemption of real-estate dealers and contractors whose business does not amount to $1,000 per annum from the operation of an ordinance imposing a license tax for the privilege of transacting business is held, in Com. Use of Titusville v. Clark (Pa.) 57 L. R. A. 348, to be unconstitutional and void as class legislation, where such contractors and dealers are classified with other persons effecting sales to whom a similar exemption is not allowed.

Contracts.

An intention to repudiate the contract, by a buyer of scrap iron who is to pay for each 100 tons as delivered, justifying a rescission by the seller, is held, in Johnson Forge Co. v. Leonard (Del.) 57 L. R. A. 225, to be shown where, after receiving 100 tons, he insists on having two or three carloads more delivered before remitting for the 100 tons.

Criminal Law.

The granting of a reprieve and the fixing of a date for the execution of a convicted criminal is held, in State v. Heller (N. J. L.) 57 L. R. A. 312, to be, by the common law, a judicial power, and not to be exer-

cised by the governor except in so far as it is expressly permitted by the Constitution.

Damages.

The measure of damages for breach of warranty of the capacity of a kiln for drying lumber, when there is no kiln of the agreed capacity on the market, is held, in Huyett-Smith Mfg. Co. v. Gray (N. C.) 57 L. R. A. 193, not to be the difference between the value of the kiln sold and one of the required capacity, but the difference between the value of the apparatus delivered and the contract price.

Damages for the death of the child are held, in Lathrope v. Flood (Cal.) 57 L. R. A. 215, not to be allowable in an action by husband and wife for the physician's abandonment of the wife during her confinement.

The owner of an apartment house is held, in Aldrich v. Metropolitan West Side Elev. R. Co. (Ill.) 57 L. R. A. 237, to have no right to recover damages from an electric elevated railroad company whose tracks cross the highway within 19 feet of his property, where the injury differs from that suffered by the general public only in the proximity of the tracks.

Estoppel.

The negligent placing of a will so that its existence is not known for several years after testator's death, and the laches of the devisee in not producing it, are held, in Reid v. Benge (Ky.) 57 L. R. A. 253, not to estop him from asserting his claim against one who has acquired title from the heir, at any time before the right to probate or register the will is barred.

The owner of a piano who leases it to a retail dealer in musical instruments is held, in Oliver Ditson Co. v. Bates (Mass.) 57 L. R. A. 289, not to be estopped to claim it from one who first hired and then purchased it from the retail dealer who held it only under a lease providing that it should be kept in the purchaser's house, although the lessor failed to notify such purchaser of his claim to the instrument for nearly two years, during which time the latter bought and paid for it, believing it to belong to the retail dealer.

Evidence.

A declaration by a motorman running an electric car, in regard to the cause of the accident, made while the car was still on the body of a child whom it had run down, is held, in Sample v. Consolidated Light & R. Co. (W. Va.) 57 L. R. A. 186, to be admissible in evidence as a part of the *res gestæ*, in an action for the injury.

Extradition.

A prisoner charged with violation of the Federal laws, who is transferred from one state to another for trial under process from a Federal court, is held, in *Re* Little (Mich.) 57 L. R. A. 295, to be properly turned over to the authorities of the latter state for trial upon a charge of violation of its laws, without being afforded an opportunity to return to the former state.

Garnishment.

The right to garnish a debtor is held, in Tootle v. Coleman (C. C. A. 8th C.) 57 L. R. A. 120, not to be limited to the situs of the chose in action; and the garnishment, by a citizen of one state, of a debtor of the same state whose creditor resides and whose debt was contracted and is payable in another state, is held to be such an attachment of the chose in action as will authorize the court to obtain jurisdiction to dispose of it by publication of the summons against the defendant.

Highways.

One whose property is cut off from access to markets and from communication with his fellowmen by neglect of the county commissioners to keep the highway leading to it in repair is held, in Bembe v. Anne Arundel County Comrs. (Md.) 57 L. R. A. 279, to suffer a special injury which will entitle him to maintain an action against the commissioners.

Damages for injury to property by discontinuing a portion of the street on which it is situated, so that traffic is diverted from it, trade diminished, and its value lessened, although access to it still exists by a longer route, are held, in Cram v. Laconia (N. H.) 57 L. R. A. 282, not to be recoverable under

a statute providing for the payment of damages sustained by the discontinuance of a highway.

Holidays.

The owner of an option which matures on a holiday is held, in Page v. Shainwald (N. Y.) 57 L. R. A. 173, to have no right to exercise the option on the succeeding day, where the statutes make no provision for the suspension of general business on the holiday.

Husband and Wife.

See CONFLICT OF LAWS.

Injunction.

The enforcement of taxes against property by a city is held, in Philadelphia Mortgage & Trust Co. v. Omaha (Neb.) 57 L. R. A. 150, not to be restrainable by injunction, on the ground of equitable estoppel, because the city treasurer erroneously marked taxes paid on the tax records, and a third party, relying on the record and believing the taxes were paid, loaned money on the property and acquired title thereto by foreclosure.

Insurance.

An agreement by an applicant for life insurance, that the medical examiner appointed and paid by the insurer shall be the agent of the applicant in recording the medical examination, is held, in Sternaman v. Metropolitan Life Ins. Co. (N. Y.) 57 L. R. A. 318, to be prohibited by public policy.

An insurance company is held, in Taylor v. Anchor Mut. F. Ins. Co. (Iowa) 57 L. R. A. 328, not to be able to defeat liability on its policy because of misrepresentations in the application as to the title to the property or the encumbrances thereon, if they were correctly stated to the agent and he failed to make out the application in accordance with the information given.

Landlord and Tenant.

Keeping the keys for five days after the expiration of a monthly period, and remaining in possession of the leased property for the purpose of cleaning up rubbish, after the refusal of the landlord to accept the keys at the expiration of the month, are held, in Byxbee v. Blake (Conn.) 57 L. R. A. 222, to render the tenant liable for another month's rent.

A covenant in a lease against assigning or subletting is held, in Presby v. Benjamin (N. Y.) 57 L. R. A. 317, not to be violated by placing a care taker in possession during the tenant's absence.

Master and Servant.

The negligent act of a foreman with general control and authority to employ and discharge workmen, in ordering a subworkman upon an elevator and himself operating the elevator with negligence, to the workman's injury, is held, in Swift & Co. v. Bleise (Neb.) 57 L. R. A. 147, not to be the act of a fellow servant, but of a vice principal.

Injury received by a young man seventeen years old while helping brakemen, at their request, to load a piano, is held, in Cincinnati, N. O. & T. P. R. Co. v. Finnell (Ky.) 57 L. R. A. 266, to be within the rule which exempts the master from liability to one who is injured while helping his servants, at their request, by reason of their negligence.

Municipal Corporations.

An ordinance providing for the construction of a cement sidewalk 20 feet wide on each side of a street, at the expense of the abutting property, is held, in Chicago v. Wilson (Ill.) 57 L. R. A. 127, not to be unreasonable where the locality is one of residence and business, the property is worth from $150 to $300 per front foot, and the existing walks, varying from 6 to 20 feet in width, are in bad condition.

An unorganized assemblage of merrymakers to the number of 1,000 in the main street of a city, exploding fireworks, obstructing the use of the street, and endangering life and property, is held, in Madisonville v. Bishop (Ky.) 57 L. R. A. 130, to be a "riotous or tumultuous assemblage of people" within the meaning of a statute making the municipality liable for injuries done by such an assemblage.

The mere fact of an explosion of gas in a sewer is held, in Fuchs v. St. Louis (Mo.)

57 L. R. A. 136, not to be sufficient to charge the municipality with liability for the injury caused thereby.

The liability of a municipality to damages for permitting a drainage ditch to become obstructed and filled with filth and offal, so that the water flows onto adjoining land and causes sickness in the family of its owner, is held, in Williams *v.* Greenville (N. C.) 57 L. R. A. 207, to be limited to the injury to the property, and not to include injury by sickness or death, or by loss of time, etc., resulting from sickness.

The operation of a stone-crushing machine to prepare material for constructing and repairing its highways is held, in Colwell *v.* Waterbury (Conn.) 57 L. R. A. 218, to be a governmental act of a municipality, so that it will be exempt from liability for injury to an employee through a defect in a machine, although the machine is located several miles from the place where the material is to be used.

Negligence.

The owner of walls left standing after the destruction of the building by fire is held, in Ainsworth *v.* Lakin (Mass.) 57 L. R. A. 132, to be under no obligation to adjoining property owners to remove or protect the walls, until he has had a reasonable time to make necessary investigation and take such precautions as are required.

The liability of one who, by express invitation, induces a person to make use of a portion of premises for an expressed purpose is held, in Ryerson *v.* Bathgate (N. J. Err. & App.) 57 L. R. A. 307, to be confined within the limits of the invitation, and not to extend to injuries received by the person invited while using the premises for a purpose not expressed and not authorized by the invitation.

Partition.

Including the husband as grantee in a deed to partition to the wife her share of property in which she has an undivided interest is held, in Cottrell *v.* Griffitts (Tenn.) 57 L. R. A. 332, to give him no greater interest than though the deed had been to the wife alone.

Public Improvements.

The cost of a street improvement is held, in Blochman *v.* Spreckels (Cal.) 57 L. R. A. 213, not to be lawfully assessable against abutting property, where the contractor is required by the ordinance to sustain all loss or damage arising from the nature of the work to be done under the specifications, since this requirement would tend to increase the cost of the work.

Real Property.

See CONSTITUTIONAL LAW.

Street Railways.

See DAMAGES.

Taxes.

The exemption of corporations which do not have any special privileges and franchises from the operation of the statute imposing a franchise tax on corporations which do have such franchises or privileges is held, in Louisville Tobacco Warehouse Co. *v.* Com. (Ky.) 57 L. R. A. 33, not to make the statute unconstitutional for lack of uniformity.

An ad valorem tax upon the franchise of a street railway is held, in South Covington & C. Street R. Co. *v.* Bellevue (Ky.) 57 L. R. A. 50, to be required by a constitutional provision which declares that all property, whether owned by natural persons or corporations, shall be taxed in proportion to its value.

The deduction from the value of the capital stock of a corporation, in assessing it for taxation, of the total amount of corporate indebtedness except indebtedness for current expenses, is held, in State *v.* Duluth Gas & W. Co. (Minn.) 57 L. R. A. 63, to be invalid because in violation of the constitutional requirement of equality and uniformity in taxation.

The franchise of an electric light and power company which has a right to use streets and alleys of the city is held, in Commercial Electric Light & P. Co. *v.* Judson (Wash.) 57 L. R. A. 78, to be subject to taxation under laws authorizing in general terms the taxation of real and personal property, although there is no special pro-

vision for ascertaining the value of the franchise.

Trial.

In an action of tort, if it be impossible, in the nature of the case, to distinguish between the damage arising from the actionable injury, and damage which has another origin, it is held, in Jenkins *v.* Pennsylvania R. Co. (N. J.) 57 L. R. A. 309, that the jury should be left to make from the evidence the best estimate in their power as reasonable men, and award to the plaintiff compensatory damages for the actionable injury.

Warehousemen.

See BAILMENT.

Wills.

See also ESTOPPEL.

Revocation of a will is held, in Cutler *v.* Cutler (N. C.) 57 L. R. A. 209, to be effected by adopting its mutilation as such.

New Books.

"Tourville's Notarial and Commissioners' Record." With Special Instructions and Compiled Laws of the State Statutes Relating to Notaries and Commissioners. (G. S. Tourville, St. Louis, Mo.) 1 Vol. $3.50.

"Digest of the Kansas Supreme Court Reports." By C. F. W. Dassler. (Crane & Co., Topeka, Kan.) 1 Vol. Sheep, $12.50. Buckram, $12.

"Remy's Indiana Digest." Covering Last 34 Volumes of Indiana Supreme and Appellate Court Reports. (The Bowen-Merrill Co., Indianapolis, Ind.) 1 Vol. $7.50.

"Noyes on Intercorporate Relations." (Little, Brown & Co., Boston, Mass.) 1 Vol. $6.

"Buswell & Walcott's Practice and Pleading in Personal Actions in the Massachusetts Courts." 4th Ed. (Little, Brown & Co.) 1 Vol. $6.

"Crocker's Notes on Common Forms." A Book of Massachusetts Law. (Little, Brown & Co.) 1 Vol. $6.

"Dill on New Jersey Corporations." 4th Ed. Revised and Enlarged. (Baker, Voorhis & Co., New York.) 1 Vol. $3.

"Hardwicke's Trial Lawyer's Assistant in Civil Cases." (Banks & Co., Albany, N. Y.) 1 Vol. $6.

"Banks' Lawyers' Diary for 1903." (Banks & Co.) $1.50.

"Abbott's Criminal Trial Brief." 2d Ed. Revised and Enlarged. (L. C. P. Co., Rochester, N. Y.) 1 Vol. $4.50.

"Annotations to Iowa Decisions." By Clyde B. Aitchison. (L. C. P. Co.) 1 Vol. $7.50.

Recent Articles in Law Journals and Reviews.

"Corporations as Guarantors."—25 National Corporation Reporter, 181.

"The Control of 'Trusts.'"—14 Green Bag, 460.

"Prior and Subsequent Negligence."—55 Central Law Journal, 284.

"Liability of a Municipality for the Unhealthy or Defective Condition of a City Prison, Where It Is under No Duty to Erect a Prison, or Fails to Conform to the Statutory Requirements."—55 Central Law Journal, 281.

"Liability for Republication or Repetition of Libel or Slander."—2 Maryland Law Review, 7.

"Husband and Wife: Comment on the Law of 1898."—2 Maryland Law Review, 5.

"Specific Performance of Contracts. Perfecting Title after Suit Has Begun."—41 American Law Register, N. S. 523.

"The Negotiable Instruments Law."—41 American Law Register, N. S. 499.

"Proper Description of Land in Deeds and Documents."—55 Central Law Journal, 303.

"Traders in Foreign Law."—113 Law Times, 486.

"The Rights of Conspirators."—35 Chicago Legal News, 76.

"Rights of Creditors of a Corporation Disposing of Its Whole Property to Another Corporation."—64 Albany Law Journal, 355.

"Charitable and Religious Trusts."—64 Albany Law Journal, 347.

"New Trials."—55 Central Law Journal, 328.

"The Case of the Pius Fund of the Cali-

fornias before the Permanent Court of Arbitration under the Hague Convention of 1899."—55 Central Law Journal, 321.

"Mechanic's Lien." — 64 Albany Law Journal, 490.

"One Requisite of Fair Courts-Martial."—64 Albany Law Journal, 386.

"Married Woman's Earnings."—64 Albany Law Journal, 384.

"Control of the Trusts."—64 Albany Law Journal, 379.

"Constitutional Protection of 'Original Packages' Employed in Interstate Commerce."—55 Central Law Journal, 342.

"Refusing Requisition of Fugitive because of the Fear that He Will Be Lynched."—55 Central Law Journal, 341.

"The Law of Dramatic Copyright."—1 Michigan Law Review, 102.

"The Genesis and Development of the Law of Waters in the Far West."—1 Michigan Law Review, 91.

"What is the Law Merchant."—2 Columbia Law Review, 470.

"Enforcement of Attorney's Lien."—2 Columbia Law Review, 449.

"The Right of Privacy."—2 Columbia Law Review, 437.

"Extradition."—3 The Lawyer, 93.

The Humorous Side.

DE MINIMIS.—

The law pays little heed
To littles, it appears:
The bandage on Justicia's eyes
Quite likely interferes.
Microscopy was not begun
Tho' Coke did write on Littleton.

Hence briefs are rarely brief,
Points are not points at all;
A lawyer's feet are sometimes large,
His fees are seldom small.
All these are what the law expects,
De minimis non curat lex.

CLINGS TO HIS CRIMINAL.—Congratulations to the court and a tribute to his attorney are tendered by an acquitted colored brother in Georgia by means of the following published letter:

Mr. Editor

Kindly allow me space in your daily Herald to express my thanks to the above name court in toto. I (——) a prosecuted and supposed condemned man by wife prosecution, from wilful calamities and rumors has been arranged before the above court under the cumbersome weight of two warrants this week, and by the fair dicision and skillfull discrection of the court was soon favored with justice and privilidge. No fairer men exist and no more skillful attys pleads than now ranges in ware county court I find myself too enadequate to express my thanks for they have stepped beyond the line of race prejudice and color mark in the dealing of court in our co.

Col. — — ——— as an attorney, has but few superiors if any in the study of law, and show no color disfranchisement in clinging to his criminal.

I again express my thanks as a free, & law abiding citizen. L—— B———.

Wayeross, Ga.

THE DECEASED OBJECTS.—In an Iowa case brought against a dead man, and so entitled by an attorney who was apparently absent-minded, the following motion was filed, as we learn from the "Davenport Republican:"

DEFENDANT'S MOTION TO DISMISS.

In the District Court in and for County.

Claus Knutson Morvke vs. Knuteson Sofjord, Deceased.

Behold ! ! ! Now doth appear the shades of Knuteson Sofjord, deceased, and disdaining to be sworn after the manner of men but with all the solemnity of those long dead objects to the jurisdiction of this Court.

1st. For the reason that it appears from the record that he is a non-resident of Iowa and a resident of Elysium and this Court will take judicial knowledge that no lawyers are allowed in that domain and he is thus deprived of the ability to defend in this action.

2d. The suing of a dead man is a cruel and unusual mode of punishment unknown to theology and forbidden by the constitution of the United States.

3d. Defendant admits that the notice of this action (which was by publication) reached him and, on account of the universal and uniform purity of newspapers and their editors they are always received in the land of the blest but shows to the Court that no officer of the Court can be admitted to enforce any judgment that may be rendered against him.

Therefore he prays that he be protected in his grave from the persecutions of lawyers and be allowed to REST IN PEACE.